THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.25513 OF 2007

BETWEEN:

M.Hari Narayana son of M.Chandraiah

..Petitioner

Vs.

The Municipal Corporation of Kadapa, rep. Byits Commissioner

..Respondent

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.25513 OF 2007

ORAL ORDER

On a perusal of the impugned order and the averments in the writ

petition, the inference is compelling that there is a serious dispute as to the title to the subject property.

The writ petition is directed against a notice dated.24-11-2007 issued by the respondent-Corporation alleging that the petitioner encroached on land of an extent of 258.40 square meters and has constructed a compound wall, belonging to the respondent-corporation and that the petitioner is required to remove the encroachments within three(3) days from the date of receipt of a copy of the notice failing which the same would be removed under the provisions of the Hyderabad Municipal Corporation Act,1955 (as are applicable to the 1st respondent-Corporation).

The petitioner emphatically claims that there is no encroachment and that the property belongs to him. The 1st respondent is endowed power, authority, jurisdiction under Sections.405 and 406 of the Act to remove any wall, fence, rail, post, step, booth or other structure whether of a permanent or a temporary nature as has been erected, set up in or over any street, any open channel, drain well or tank etc., Section.406 enables the Commissioner of the 1st respondent to issue written notice requiring the owner or occupier of any premises contiguous to, or in front of, or in connection with which any wall, fence, rail, post, step, booth etc., to be removed, to show cause or explain. *Prima facie* therefore on the respondent's claim that the property belongs to it and the petitioner has encroached thereupon a right inheres to initiate proceedings for demolition of the wall, under Section.405 and 406 of the Act. If the petitioner contests this claim of the respondent-Corporation he requires an appropriate declaration by a civil court of competent jurisdiction. He may if so advised seek appropriate remedy before the appropriate forum. Article.226 of the Constitution is not an appropriate vehicle or determination

of title disputes. This Court is not inclined to exercise discretion to entertain this *lis* involving a serious contest as to the title.

Since the respondent has by the impugned notice granted only three days time, which may not be practically sufficient for the petitioner to pursue appropriate remedies before the civil court of competent jurisdiction, the writ petition is disposed of at the stage of admission declining the specific relief sought by the petitioner namely invalidation of the respondent's notice and directing the respondent not to take action for demolition as proposed in the impugned notice, for a period of thirty(30) days from today. Within the aforesaid time the petitioner may pursue appropriate remedies against the action of the respondent-Corporation.

Nothing in this order shall be construed by the civil court of competent jurisdiction, which is approached by the petitioner or by any other forum or quasi-judicial authority, as a pronouncement by this Court on the merits of the rival claims. The appropriate adjudicating authority will deal with the claims urged by either of the parties on their own merits and uninfluenced by any observations herein.

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GODA RAGHURAM,J

29th NOVEMBER 2007

Note:

Issue CC

in two days

(B/o)

*TSNR